

FACTSHEET

TITLE: LETTER OF APPEAL filed by Craig D. Wittstruck on behalf of Risky's, Inc., appealing the Planning Commission action denying **SPECIAL PERMIT NO. 04065**, requested by University Place, L.L.C., for authority to sell alcoholic beverages for consumption on the premises for a beer garden at Risky's Sports Bar and Grill located at 4680 Leighton Avenue.

STAFF RECOMMENDATION: Denial.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 12/08/04 and 01/05/05
Administrative Action: 01/05/05

PLANNING COMMISSION ACTION: **Denial** (6-0: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand voting 'yes'; Carroll, Larson and Pearson absent).

FINDINGS OF FACT:

1. The purpose of proposed Special Permit No. 04065 is to sell alcoholic beverages for consumption on the premises for a beer garden at Risky's Sports Bar and Grill. This request was prompted by the implementation of the smoking ban.
2. The staff recommendation to **deny** this special permit is based upon the "Analysis" as set forth on p.9-11, concluding that light and noise associated with both the beer garden and from inside the bar when the access door is open is a concern. The expansion of the area where alcohol is consumed to include a beer garden has the potential to create a nuisance for the residences to the west of the shopping center. In addition, the proposed beer garden will utilize an existing door which is 130' from a residential district and does not meet the required separation.
3. Testimony on behalf of the applicant is found on p.14, and the exhibits submitted by the applicant are found on p.20-33. The applicant's representative testified that there will be no beer sales, service or employees in the beer garden. This application is in response to the smoking ban and will allow patrons to smoke outside of the building as opposed to in the alley. There will be no heating or air conditioning in the beer garden. The fence and the roof will shield the people in the beer garden from view by the residents.
4. There was no testimony in opposition.
5. On January 5, 2005, the Planning Commission agreed with the staff recommendation and voted 6-0 to deny proposed Resolution No. PC-00899 (See Minutes, p.15).
6. On January 11, 2005, Craig D. Wittstruck filed a letter of appeal on behalf of Risky's, Inc.

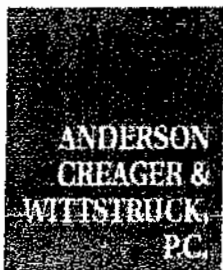
FACTSHEET PREPARED BY: Jean L. Walker

DATE: January 24, 2005

REVIEWED BY: _____

DATE: January 24, 2005

REFERENCE NUMBER: FS\CC\2005\SP.04065 Appeal



Hal W. Anderson Amie C. Martinez
Robert B. Creager Jonathan M. Braaten
Craig D. Wittstruck Jennifer A. Huxoll
Thomas R. Lamb Teresa Truksa Skretta

Attorneys at Law

1630 K Street • Lincoln, Nebraska 68508 • (402) 477-8800 • Fax (402) 477-8868 • www.acwlaw.com

January 10, 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joan Ross
City Clerk
City of Lincoln
555 South 10th Street
Lincoln, NE 68508

Re: Notice of Appeal
Special Permit No. 04065
Our File No. 00-2125

FILED
CITY CLERKS OFFICE
JAN 11 2 41 PM
CITY OF LINCOLN
NEBRASKA

Dear Joan:

On behalf of the Applicant, Risky's, Inc., please accept this letter as notice of appeal of the Planning Commission's recommendation of denial of the above-referenced Special Permit of date of January 6, 2005.

Should you have any questions or require anything further in order to proceed with this appeal, please contact us.

Sincerely,


ANDERSON, CREAGER &
WITTSTRUCK, P.C.

Craig D. Wittstruck

CDW/tm

**PLANNING COMMISSION FINAL ACTION
NOTIFICATION**

TO : Mayor Coleen Seng
Lincoln City Council

FROM : Jean Walker, Planning 

DATE : January 6, 2005

RE : **Special Permit No. 04065**
(On-sale Alcohol - Risky's Sports Bar and Grill - 4680 Leighton Avenue)
Resolution No. PC-00899 - DENIED

The Lincoln City-Lancaster County Planning Commission took the following action at their regular meeting on Wednesday, January 5, 2005:

Motion made by Carlson, seconded by Marvin, to **deny Special Permit No. 04065**, requested by University Place, L.L.C., for authority to sell alcoholic beverages for consumption on the premises for a beer garden at Risky's Sports Bar and Grill generally located at 4680 Leighton Avenue. Motion to **deny** carried 6-0 (Carlson, Marvin, Krieser, Sunderman, Taylor and Bills-Strand voting 'yes'; Carroll, Larson and Pearson absent).

The Planning Commission's action is final, unless appealed to the City Council by filing a Letter of Appeal with the City Clerk within 14 days of the date of the action by the Planning Commission.

Attachment

cc: Building & Safety
Rick Peo, City Attorney
Public Works
Roger Patton, 4680 Leighton Avenue, 68504
Craig Wittstruck, 1630 K Street, 68508
University Place Community Organization (3)

i:\shared\wp\jlu\2005 ccnotice.sp\SP.04065

01/05/05: DENIED 6-0

RESOLUTION NO. PC- 00899

SPECIAL PERMIT NO. 04065

1 WHEREAS, University Place, LLC has submitted an application
2 designated as Special Permit No. 04065 for authority to sell alcoholic beverages for
3 consumption on the premises for a beer garden at Risky's Sports Bar and Grill
4 generally located at 4680 Leighton Avenue, legally described as:

5 Lot 1, UPC First Addition, Lincoln, Lancaster County,
6 Nebraska; and

7 WHEREAS, the real property adjacent to the area included within the site
8 plan for this permit to sell alcoholic beverages on the premises will not be adversely
9 affected; and

10 WHEREAS, said site plan together with the terms and conditions
11 hereinafter set forth are consistent with the intent and purpose of Title 27 of the Lincoln
12 Municipal Code to promote the public health, safety, and general welfare.

13 NOW, THEREFORE, BE IT RESOLVED by the Lincoln City-Lancaster
14 County Planning Commission of Lincoln, Nebraska:

15 That the application of University Place, LLC, hereinafter referred to as
16 "Permittee", to sell alcoholic beverages for consumption on the premises for a beer

1 garden at Risky's Sports Bar and Grill on property legally described above be and the
2 same is hereby granted under the provisions of Section 27.63.680 of the Lincoln
3 Municipal Code upon condition that operation of said licensed premises be in strict
4 compliance with said application, the site plan, and the following additional express
5 terms, conditions, and requirements:

6 1. This permit approves the sale of alcoholic beverages for
7 consumption on the premises at Lot 1, UPC First Addition, as shown on the revised site
8 plan.

9 2. Before receiving building permits:

10 a. The Permittee must complete the following instruction and
11 submit the documents and plans to the Planning Department
12 for review and approval:

13 i. Six copies of a revised site plan approved by the
14 Public Works & Utilities Department.

15 ii. The following notes added to the site plan:

16 (1) There shall be no amplified noise source
17 associated with the beer garden.

18 (2) The access door shall remain closed at all
19 times except when used to enter and exit the
20 outdoor premises.

21 (3) Any lighting must be shielded so it does not
22 shine directly on adjacent properties and must
23 comply with the Design Standards for Parking
24 Lot Lighting.

1 b. Submit a revised and completed ownership certificate
2 prepared and signed by an attorney, title company, or
3 abstractor. It must include the legal description of the
4 subject property.

5 3. Before the sale of alcohol for consumption on the premises, all
6 development and construction must conform to the approved plans.

7 4. The site plan approved by this permit shall be the basis for all
8 interpretations of setbacks, yards, locations of buildings, location of parking and
9 circulation elements, and similar matters.

10 5. The terms, conditions, and requirements of this resolution shall be
11 binding and obligatory upon the Permittee, its successors, and assigns. The building
12 official shall report violations to the City Council which may revoke the special permit or
13 take such other action as may be necessary to gain compliance.

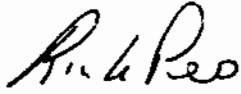
14 6. The Permittee shall sign and return the City's letter of acceptance
15 to the City Clerk within 30 days following approval of the special permit, provided,
16 however, said 30-day period may be extended up to six months by administrative
17 amendment. The City Clerk shall file a copy of the resolution approving the special
18 permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be
19 paid in advance by the Permittee.

20 The foregoing Resolution was approved by the Lincoln City-Lancaster
21 County Planning Commission on this ____ day of _____, 2004.

ATTEST:

01/05/05: DENIED 6-0 (Marvin, Krieser, Sunderman,
Taylor, Carlson and Bills-Strand voting 'yes'; Carroll,
Larson and Pearson absent).

Approved as to Form & Legality:

A handwritten signature in cursive script, appearing to read "Rick Reed", is written above a horizontal line.

Chief Assistant City Attorney

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for December 8, 2004 PLANNING COMMISSION MEETING

P.A.S.: Special Permit #04065

PROPOSAL: To allow the sale of alcoholic beverages for consumption on the premises for a beer garden at Risky's Sports Bar and Grill.

CONCLUSION: Light and noise associated with both the beer garden and from inside the bar when the access door is open is a concern. The expansion of the area where alcohol is consumed to include a beer garden has the potential to create a nuisance for the residences to the west of the shopping center.

RECOMMENDATION:

Denial

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 1, UPC First Addition, Lancaster County, Nebraska.

LOCATION: 4680 Leighton Avenue.

EXISTING ZONING: B-3 Commercial

EXISTING LAND USE: Commercial

SURROUNDING LAND USE AND ZONING:

North:	Parking Lot/Multiple-family Residential	R-6
South:	UN-L East Campus	P
East:	Commercial	B-3
West:	Multiple-family Residential	R-6

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan designates commercial land uses in this area.

BACKGROUND: The owner of Risky's is proposing to construct a beer garden at the west edge of the building. The bar has been in existence prior to the requirement for special permits for on and off sale alcohol. It does not comply with the current requirements for a special permit to sell alcohol, and is considered a nonconforming use.

This request covers only the proposed 20' x 19' expansion of the bar to allow for an outdoor beer garden. The beer garden is accessed by what appears to be an emergency access door to the bar. The expansion will extend into the existing parking lot and eliminates approximately three parking spaces.

ANALYSIS:

1. SPECIAL PERMIT REQUIREMENTS PER LINCOLN MUNICIPAL CODE (LMC) 27.63.680:

Alcoholic beverages may be sold for consumption on the premises in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2 and I-3 zoning districts upon the approval of a special permit. Alcoholic beverages may also be sold for consumption on the premises as an accessory use to a golf course or country club as part of a separate special permit under Section 27.63.130 approving the golf course or country club in any district where recreational facilities are allowed as a permitted use, permitted conditional use, or permitted special use. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions:

(a) Parking shall be provided on-site at the ratio of one space per 100 square feet of gross floor area.

Based upon a 1999 parking count for the shopping center, 200 parking stalls are required, and 537 parking stalls were available. With a cross-parking agreement covering the center, the number of parking spaces provided on the site is well in excess of what is required by Lincoln Municipal Code (LMC) Chapter 27.67 (Parking).

(b) The sale of alcoholic beverages for consumption off the premises shall not be permitted without issuance of a permit under LMC Section 27.63.685 of this code.

This application is for a special permit to allow the sale of alcohol for consumption on the premises. The sale of alcoholic beverages off the premises is not a part of this proposal and is not being requested.

©) The designated area specified in a license issued under the Nebraska Liquor Control Act of any building approved for such activity must be located no closer than 100 feet from a day care facility, park, church, state mental health institution, or a residential district (except where such use is accessory to a golf course or country club).

The shopping center is surrounded by R-6 zoning to the north and west. The dimensions on the site plan (verified by the Police Department) show the beer garden located 101' from the R-6 to the north, and 110' from the R-6 to the west. There is no known day care facility, park, church, or state mental health institution in the vicinity.

(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.

No additional lighting is shown as part of this request. Any lighting must comply with the Parking Lot Lighting Standards of the City of Lincoln Design Standards and will be reviewed at the time of building permits.

(e) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

A drive-through window is not shown as part of this application.

(f) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

No such devices are shown as part of this application. However, the impact of noise from the bar when the door opened to access the beer garden is a concern. The Police Department notes their concern over the impact of noise upon the neighbors and is recommending denial as a result.

(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.

Both access doors for the bar are located on the west side of the building, and are within 150' of R-6 zoning to the west. As noted previously, the existing bar is considered nonconforming and this is one of the reasons why. It is also nonconforming because the licensed premises is within 100' of R-6 to the north. LMC allows nonconforming uses to continue to operate, but does not allow them to expand or be rebuilt if destroyed except by special permit.

While the proposed beer garden meets all applicable location requirements, it will utilize an existing door which is 130' from a residential district and does not meet the required separation. It is the intent of the separation provision to protect surrounding residences from light and noise emanating from inside the premises when the door is open. Even if the door is treated as existing and not reviewed as a component of this permit, the impact of the potential noise and light escaping due to the increased use of the door because of the beer garden must be considered. A beer garden is viewed as a general extension the premises, and it must be assumed that the neighbors would be exposed to the range of activities previously confined inside.

While the review standards are applied to this request independent of the existing bar, approval of this permit will have the effect of expanding a nonconforming use while simultaneously creating a potential nuisance for adjacent residences.

(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.

Primary access to the subject premises is from Leighton Avenue, a minor arterial street.

(l) All other regulatory requirements for liquor sales shall apply, including licensing by the state.

(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:

- (1) Revocation or cancellation of the liquor license for the specially permitted premises; or**
- (2) Repeated violations related to the operation of the permittee's business.**
- (3) Repeated or continuing failure to take reasonable steps to prevent unreasonable disturbances and anti-social behavior on the premises related to the operation of the permittee's business including, but not limited to, violence on site, drunkenness, vandalism, solicitation, or litter.**

Planning Commission approval is required for this use.

2. DEPARTMENT RESPONSES:

POLICE: The Police Department recommends denial of this request.

PUBLIC WORKS: Public Works and Utilities has requested a detailed site plan showing the location of the beer garden and parking.

Staff does not support this request and is recommending denial. However, if the Planning Commission votes to approve it, staff recommends that the Commission's approval be subject to the following conditions:

CONDITIONS:

Site Specific:

- 1. This approval permits the sale of alcohol for consumption on the premises at Lot 1, UPC First Addition, consistent with the revised site plan.

General:

- 2. Before receiving building permits:

- 2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department for review and approval.
 - 2.1.1 Submit six copies of a revised site plan approved by the Public Works and Utilities Department.
 - 2.1.2 The following notes added to the site plan:
 - 2.1.2.1 There shall be no amplified noise source associated with the beer garden.
 - 2.1.2.2 The access door shall remain closed at all times except when used to enter and exit the outdoor premises.
 - 2.1.2.3 Any lighting must be shielded so it does not shine directly on adjacent properties and must comply with the Design Standards for Parking Lot Lighting.
- 2.2 Submit a revised and completed ownership certificate prepared and signed by an attorney, title company, or abstractor. It must include the legal description of the subject property.

Standard:

- 3. The following conditions are applicable to all requests:
 - 3.1 Before the sale of alcohol for consumption on the premises, all development and construction is to comply with the approved plans.
 - 3.2 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 3.3 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
 - 3.4 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

Prepared by:

Brian Will, AICP
441-6362, bwill@lincoln.ne.gov
Planner

November 23, 2004

OWNER: University Place, LLC
c/o Kessinger/Hunter and Company
2600 Grand Blvd Suite 700
Kansas City, MO 64108
(816) 843-2690

**APPLICANT
CONTACT:** Roger Patton
4680 Leighton Avenue
Lincoln, NE
(402) 466-6966

SPECIAL PERMIT NO. 04065

PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 8, 2004

Members present: Carlson, Carroll, Krieser, Sunderman, Pearson, Marvin, Taylor, Larson and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications: None.

Proponents

1. **Craig Wittstruck** appeared on behalf of the applicant. He believes that a number of components have not been made known to the staff. He requested a continuance until the next meeting.

Taylor moved to defer, with continued public hearing and action on January 5, 2005, seconded by Krieser and carried 9-0: Carlson, Carroll, Krieser, Sunderman, Pearson, Marvin, Taylor, Larson and Bills-Strand voting 'yes'.

There was no other public testimony.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 5, 2005

Members present: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand; Carroll, Larson and Pearson absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

Brian Will of Planning staff clarified that this application is to allow the use of this beer garden primarily as a smoking area, but also for patrons consuming alcohol. This area could be used just for smokers without going through the special permit process. This special permit is required for the consumption of alcohol in the beer garden.

Proponents

1. **Craig Wittstruck**, 1630 K Street, testified on behalf of the applicant, **Risky's, Inc.** He submitted a petition from 180 patrons of Risky's who are requesting that the Planning Commission consider approving this special permit. Exhibit G submitted is the certificate of the owners of the property along the west side of the premises in support. This application is basically a response and reaction to the smoking ban. This is a situation where there will be no sales going on in the area and no employees in the area. It will be people who want to smoke outside of the building.

There will be smokers milling around the back side of the wall of the building if they do not have this additional space. The fence and the roof will shield from view the people in the beer garden/smoking area. He believes the noise will occur regardless of this special permit. The idea is to provide some shielding not only for the patrons but also for the surrounding community. There will be no employees in the area; there will be no service in the area. There will simply be tables in a shielded area for people who want to smoke. Wittstruck acknowledged that the premises are within the 150' requirement; however, the ownership is multi-family to the west and the ownership is 100% in favor of this special permit.

Carlson assumes that the ownership does not let patrons take drinks out the front door. So why can't they just construct a smoking area and simply ask the patrons not to take the alcohol out into the beer garden? Wittstruck suggested that Risky's doesn't have to do anything, and the smokers will be in the alley. In this case, they want to take responsibility for that. Risky's is willing to take the responsibility and they do not know whether it will be effective or not at this time. The owner believes this is a better alternative. It might not be cost effective to make it be a smoking area only.

The roof is a corrugated metal roof that matches the exterior of the building. This was done because of the multiple housing units to the west so that they would not be able to see down into the beer garden. It will shield light, vision and noise to some extent.

Marvin inquired whether this will be an all-season environment. Wittstruck stated that it would, but there will be no heating or air conditioning. It is not something that will be promoted. There will only be lighting and screening.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

January 5, 2005

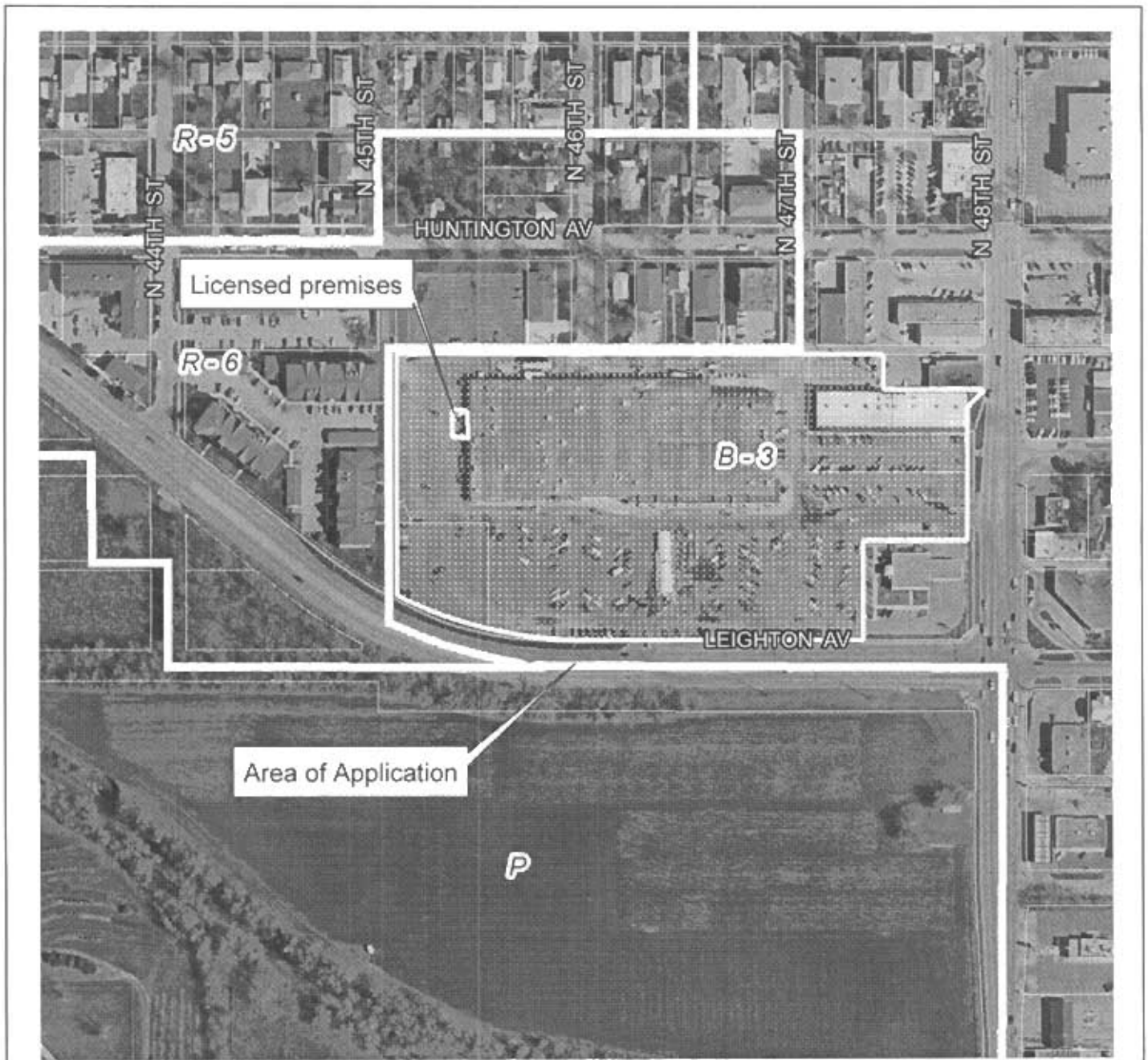
Carlson moved to deny, seconded by Marvin.

Carlson believes the issue is smoking and he believes that can be addressed by providing a smoking area outdoors and not allow the drinks to be taken to the smoking area. The nuisance activity should be kept inside the establishment.

Bills-Strand commented that she would like to see businesses promote a smoking area with some screening, ash trays and maybe some benches. She will be more concerned about the 150' spacing requirement.

Taylor's concern is the proximity to the neighbors.

Motion to deny carried 6-0: Marvin, Krieser, Sunderman, Taylor, Carlson and Bills-Strand voting 'yes'; Carroll, Larson and Pearson absent. This is final action, unless appealed to the City Council within 14 days.



2002 aerial

Special Permit #04065 4680 Leighton Ave.

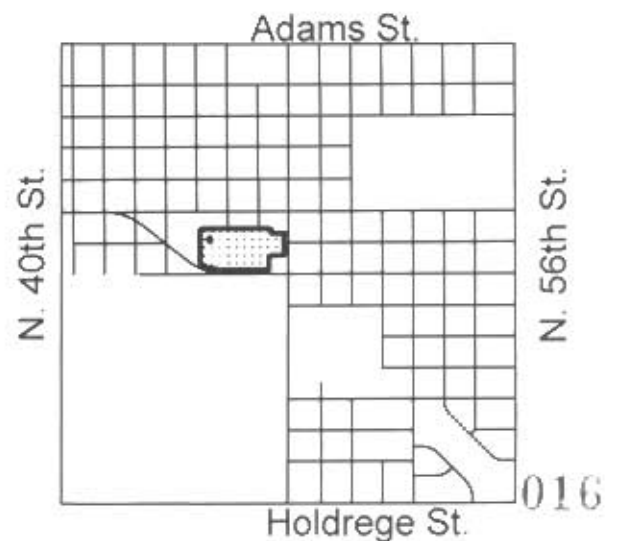
Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-6	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 17 T10N R7E



Zoning Jurisdiction Lines
City Limit Jurisdiction

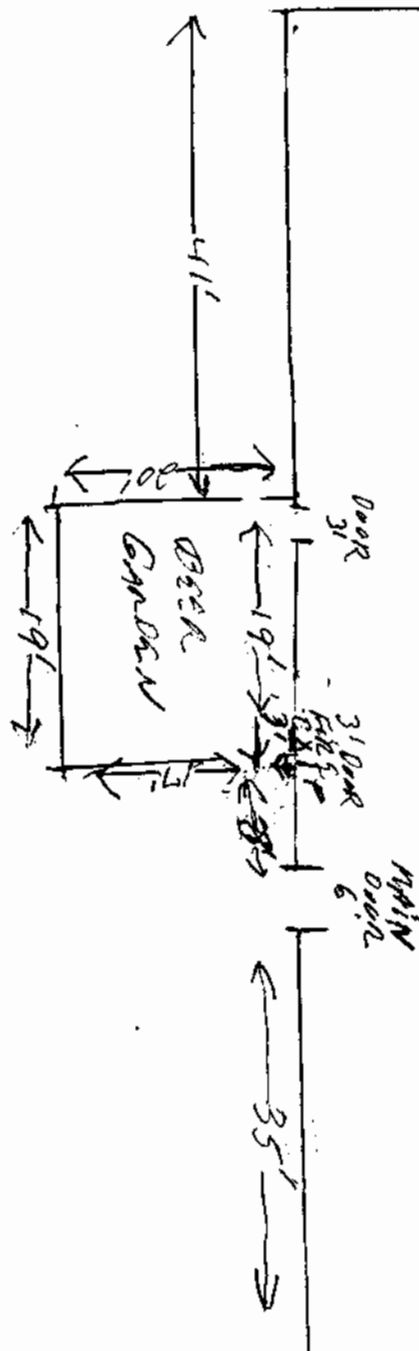


LOT LINE

60'

NOV 12 2004

PARKING



RISKY'S
SPRITS
DRINK BLICK

017

PARKING

110'

M e m o r a n d u m

To: Brian Will, Planning Department
From: Charles W. Baker, Public Works and Utilities
Subject: Alcohol Sales Special Permit #04065
Date: November 18, 2004
cc: Randy Hoskins

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the request for the proposed Beer Garden at Risky's Sports Bar & Grill located at 4680 Leighton Avenue. Public Works has the following comments:

- A detailed site plan of the location of the beer garden and parking must be provided for review.



MICHAEL WOOLMAN
<lpd737@CJIS.CI.LINC
OLN.NE.US>

11/23/2004 09:03 AM

To: Brian Will <BWill@ci.lincoln.ne.us>
cc:
Subject: Risky's Alcohol Sales Special Permit

Mr. Will,

The Lincoln Police Department is recommending denial of the Risky's Alcohol Sales Special Permit.

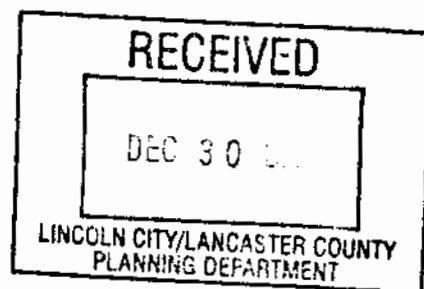
The proposed location of the "Beer Garden" is on west side of the Risky's building. The west side of Risky's faces the apartment complex located at 2360 North 44th Street. 2360 North 44th Street is multilevel apartment complex that has apartments that face east towards Risky's. The Lincoln Police Department feels that the proposed "Beer Garden" will cause unnecessary noise disturbances for the residences at 2360 North 44th.

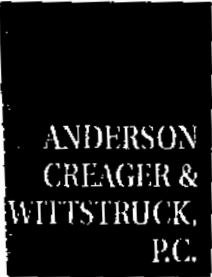
Sergeant Michael Woolman
Lincoln Police Department

BEFORE THE PLANNING COMMISSION OF LINCOLN, NEBRASKA

PRESENTATION

IN RE: SPECIAL PERMIT NO. 04065





Hal W. Anderson Amie C. Martinez
Robert B. Creager Jonathan M. Braaten
Craig D. Wittstruck Jennifer A. Huxoll
Thomas R. Lamb Teresa Truksa Skretta

Attorneys at Law

1630 K Street • Lincoln, Nebraska 68508 • (402) 477-8800 • Fax (402) 477-8868 • www.acwlaw.com

December 29, 2004

Dear Commissioners:

The following are submitted for your consideration relative to the captioned Special Permit Application.

We trust that the information originally provided to staff and as supplemented will be of assistance in your determination of this particular application.

We appreciate your time and concern dedicated to this matter.

RISKY'S, INC.

Craig D. Wittstruck - 15585
ANDERSON, CREAGER &
WITTSTRUCK, P.C.
1630 K Street
Lincoln, NE 68508
(402) 477-8800

I. LOCATION:

The business premises of Risky's, Inc. formerly known as "Champs" (owned and operated by the same shareholders), is located on the west end of the UNI Place Shopping Center, situated on the northwest corner of North 48th Street and Leighton Avenue.

The property located immediately adjacent to the subject premises, across 110 feet of paved parking lot from the west wall of the proposed addition, is owned and operated by Clifford Cheever, d/b/a Cheever Apartments, and consists multiple unit three story apartment housing.

Attached and identified as Exhibit "A" is an overhead photograph illustrating the location of the subject licensed premises. Also attached and identified collectively as Exhibit "B" are photographs of the west wall of the subject premises as presently situated, a panoramic view as between the west wall of the existing business and the west lot line, including the Cheever Apartments, and a view of the Cheever Apartment complex abutting the subject premises to the west.

II. INTENDED ADDITION:

The intended addition to the subject premises will consist of an area 19 feet in width and 20 feet in length, physically attached to the west exterior wall of the existing business premises and including the existing north ingress/egress door located along the west wall.

The structure will consist of an 8 foot cedar fence constituted of abutting 1x4 or 1x6 milled cedar lumber.

Above the 8 foot solid cedar wall, a lattice of an additional 4 feet in height will be constructed.

The addition will also entail a solid roof of approximately 12 feet in height, sloping slightly westward from its attachment to the existing exterior structure. Such roof will be

constructed of corrugated metal of a color matching the exterior of the existing premises and will be fitted with a fire repressant system such as is by City Code required.

The addition will also entail an egress door facing to the south and a hazard guard made of 4 inch steel pipe, concrete filled, along the west side of the proposed addition.

By way of security, the proposed addition will entail lighting installed beneath the roof and a video camera by which to survey the interior, as the existing door access will remain closed except for ingress/egress of patrons into and from the proposed addition.

There will be no climate control installation, nor will any form of beverages or food be sold from within the proposed addition.

Attached are Exhibits "C" through "E" providing an overhead view and site view of the proposed addition.

Attached as Exhibit "F" (2 pages) is an architectural rendition of plans and specifications for the proposed structure.

III. BENEFIT OF APPROVAL:

The benefit of approval of the proposed addition is clear and obvious.

With the advent of enforcement of Lincoln's Smoking Ban, Risky's, Inc., believes that its patrons will come upon its business premises, consume food and alcoholic beverages and then walk outside of the premises in order to smoke.

Once outside of the premises, it is the concern of Risky's, Inc. (and neighbors to the west) that loitering will occur as patrons remain outside of the premises to smoke. It is anticipated that the existence of numerous patrons, off premises, in a dimly lit and insecure area outside and smoking, will not only constitute an atheistic detriment to the neighborhood, but also a cause for safety concerns.

Risky's, Inc., is willing to request that its licensure be extended to provide an environment for its smoking patrons which will be screened, roofed, and most importantly, surveiled and supervised, in a lighted environment, free from view of the neighborhood.

To the extent that no climate control will be installed and no food or beverages will be sold from within the proposed addition, it is anticipated that the majority of such patrons will be present only for sufficient time so as to smoke a cigarette.

As it is obvious that smoking will occur outside business premises in any event, it is clear that the best possible service to the neighborhood (and patrons) will entail precisely such a plan as for which Risky's, Inc. requests approval and denotes an acceptance of responsibility on behalf of Risky's, Inc., which it would otherwise not be required to undertake.

It is apparent that various members of the adjoining neighborhood will appreciate the benefit which will be afforded in the event of approval of this particular permit, in terms of screening smoking patrons from view and confining and supervising their activities, and we respectively represent that same should be approved.

Attached as Exhibit "G", is the signed Certificate of Clifford Cheever, owner of the rental properties abutting to the west, acknowledging 100% support of the Application for many of the reasons above recited.

SUMMARY

It is clear that Risky's smoking patrons will be required to remove themselves off site for purposes of smoking due to enforcement of the ban.

They will be outside in the parking lot, in dimly lighted conditions, and they will be unsupervised.

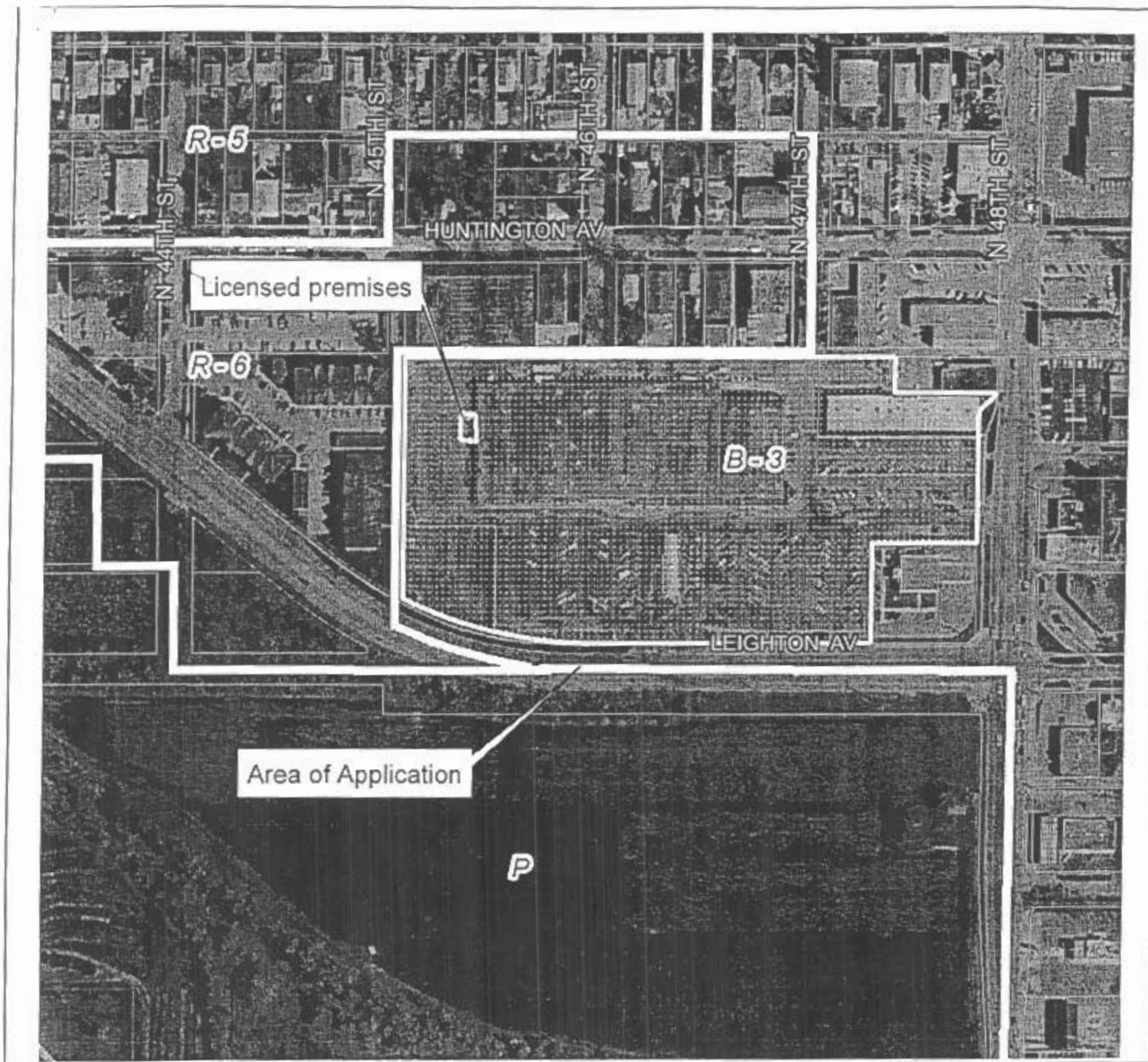
This scenario will doubtless become common place after December 31, 2004 and this situation will not only be aesthetically displeasing, but will constitute a safety hazard both to the patrons and also to the adjacent community.

This Application constitutes the perfect remedy in a manner consistent with the best interests of all concerned.

Respectfully submitted;

RISKY'S, INC.

Craig D. Wittstruck - 15585
ANDERSON, CREAGER &
WITTSTRUCK, P.C.
1630 K Street
Lincoln, NE 68508
(402) 477-8800



2002 aerial

Special Permit #04065 4680 Leighton Ave.

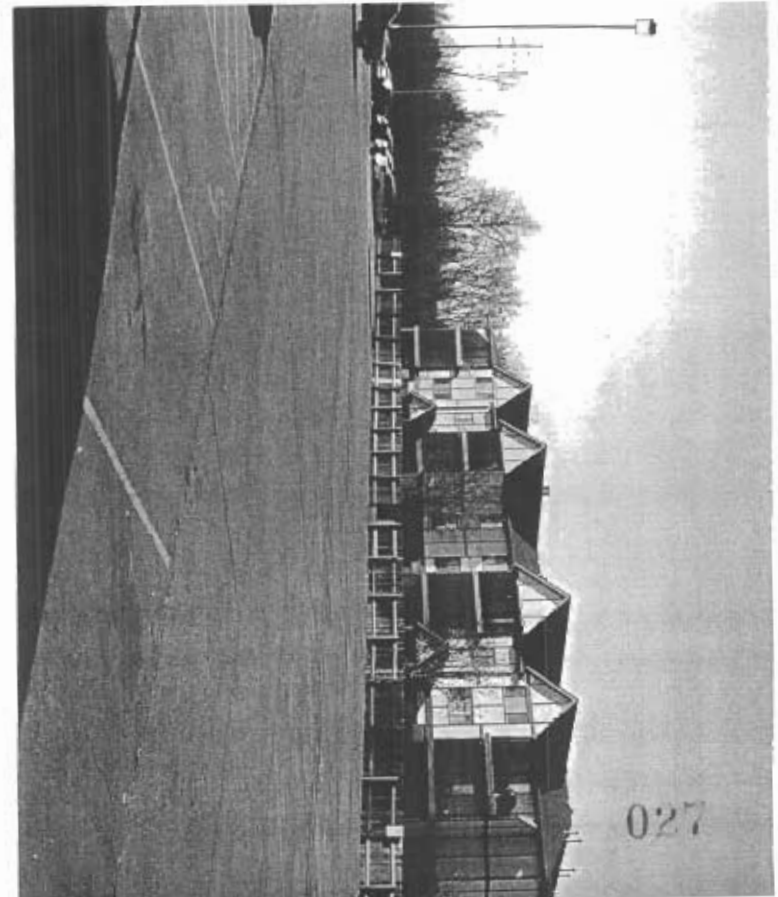
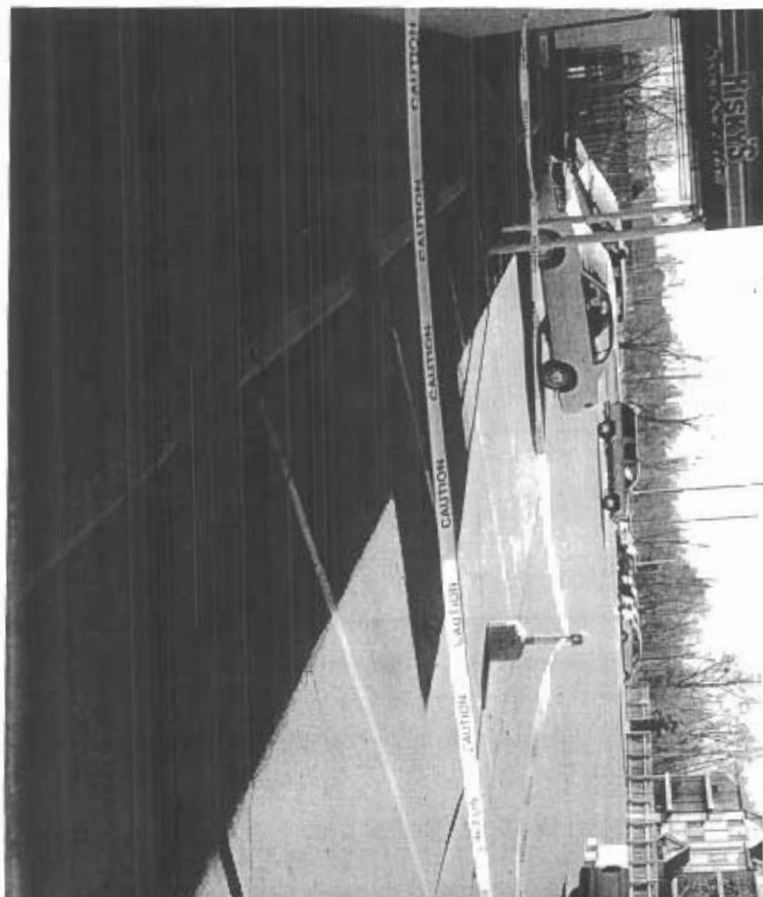
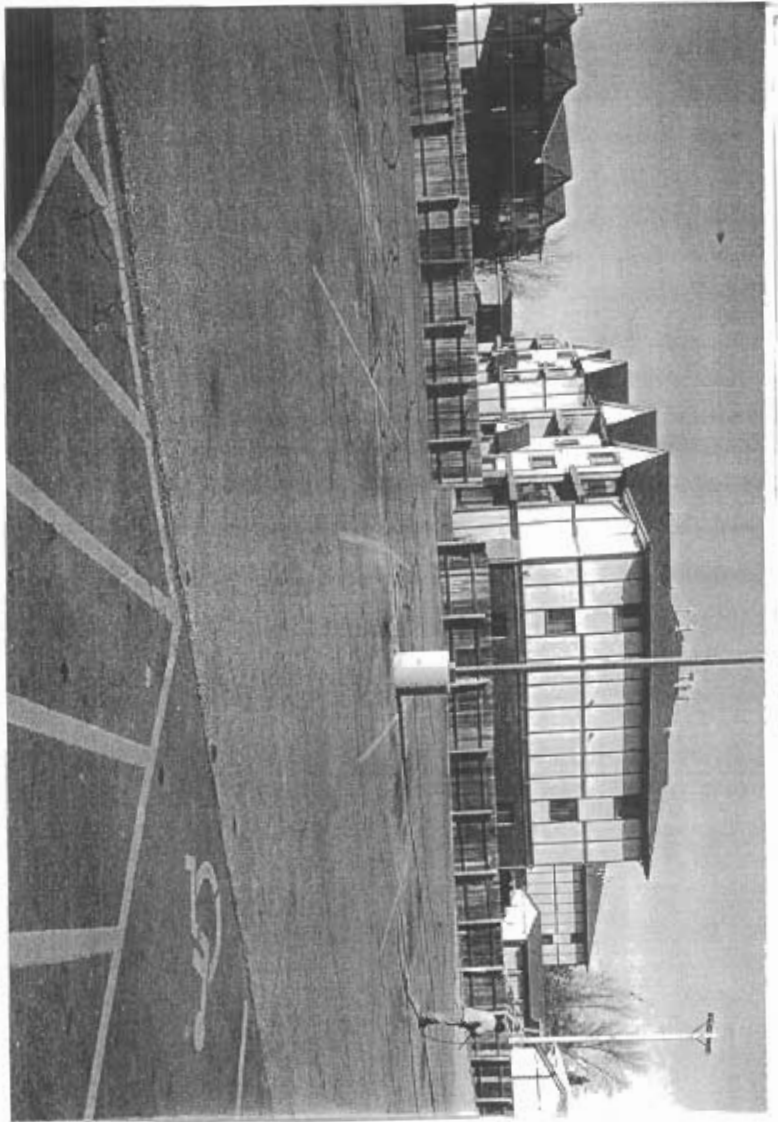
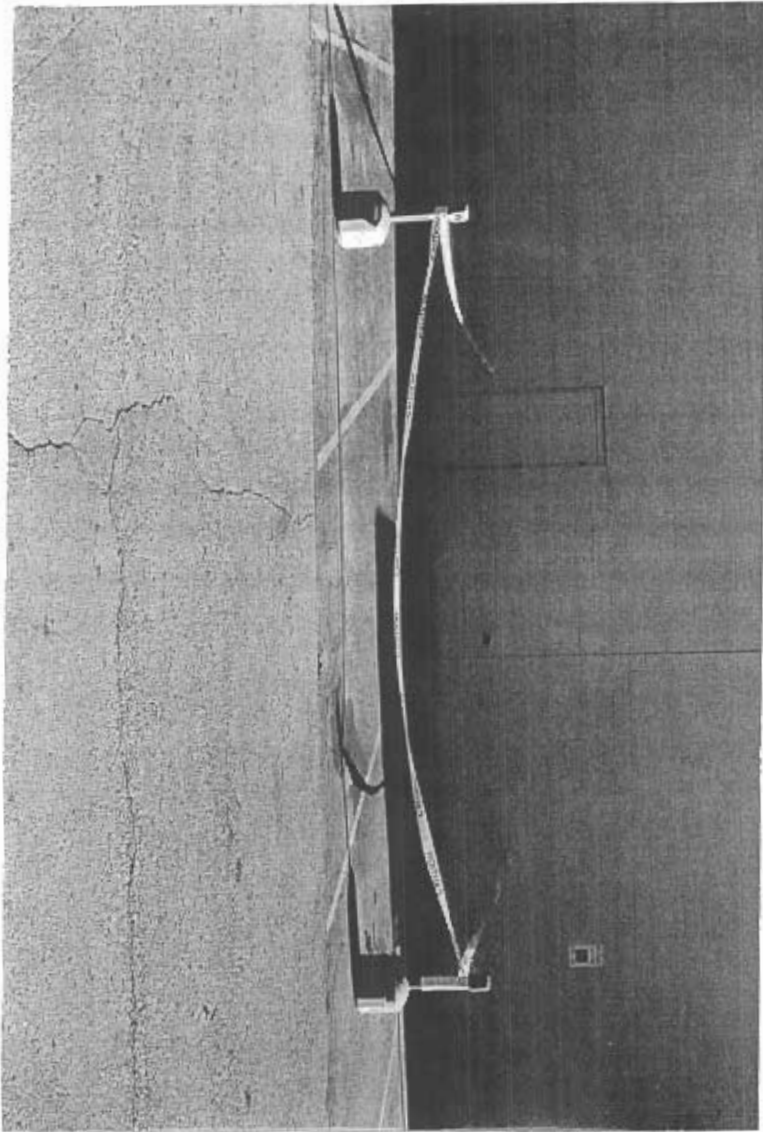
Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- R-C Residential Conservation District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile
Sec. 17 T10N R7E

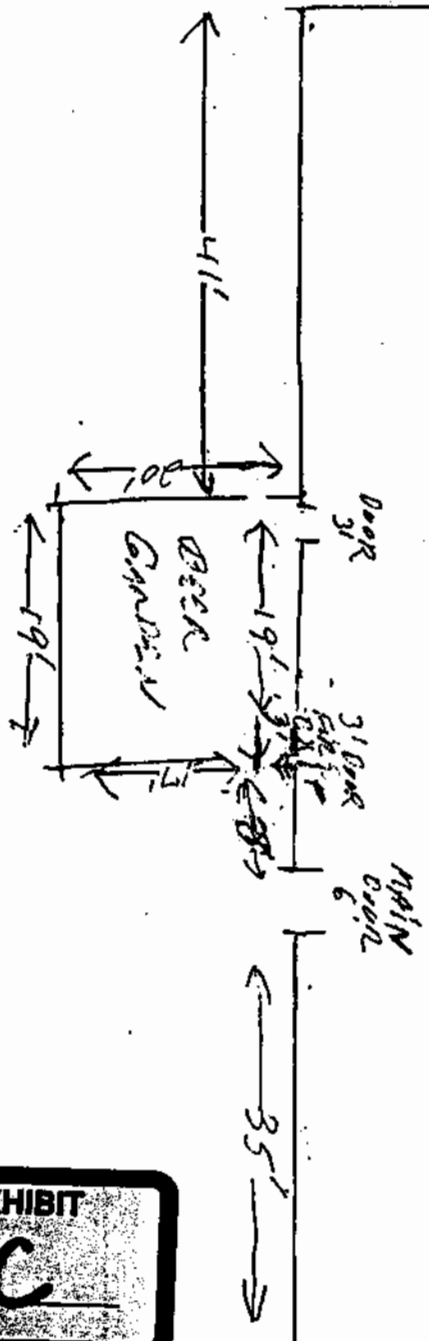


Lincoln City - Lancaster County Planning De



← 60' →

BRISKY'S
SPORTS
APR 6/2012

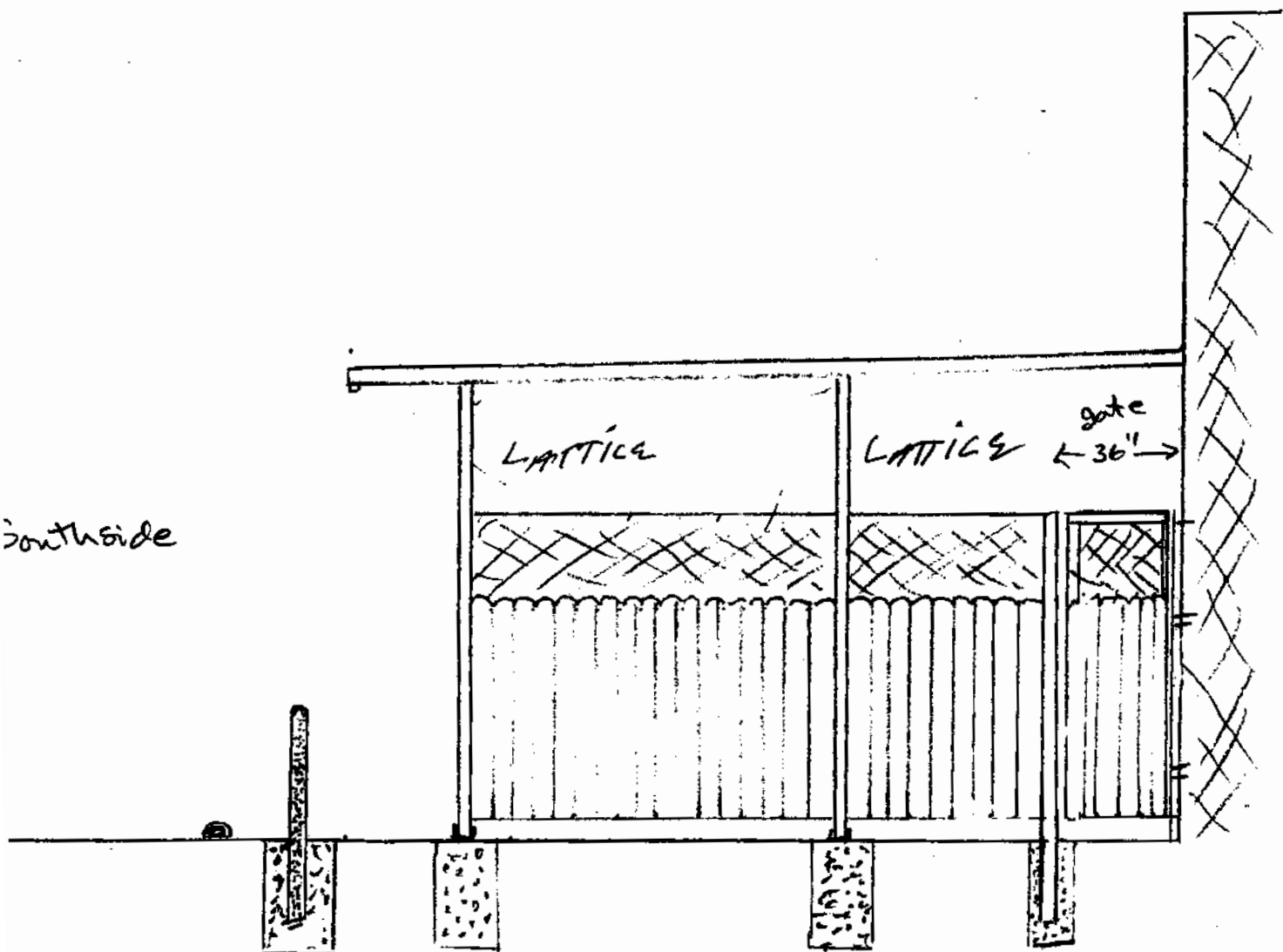


PARKING

PARKING

NOV 12 2004

Rishy's Beer Garden

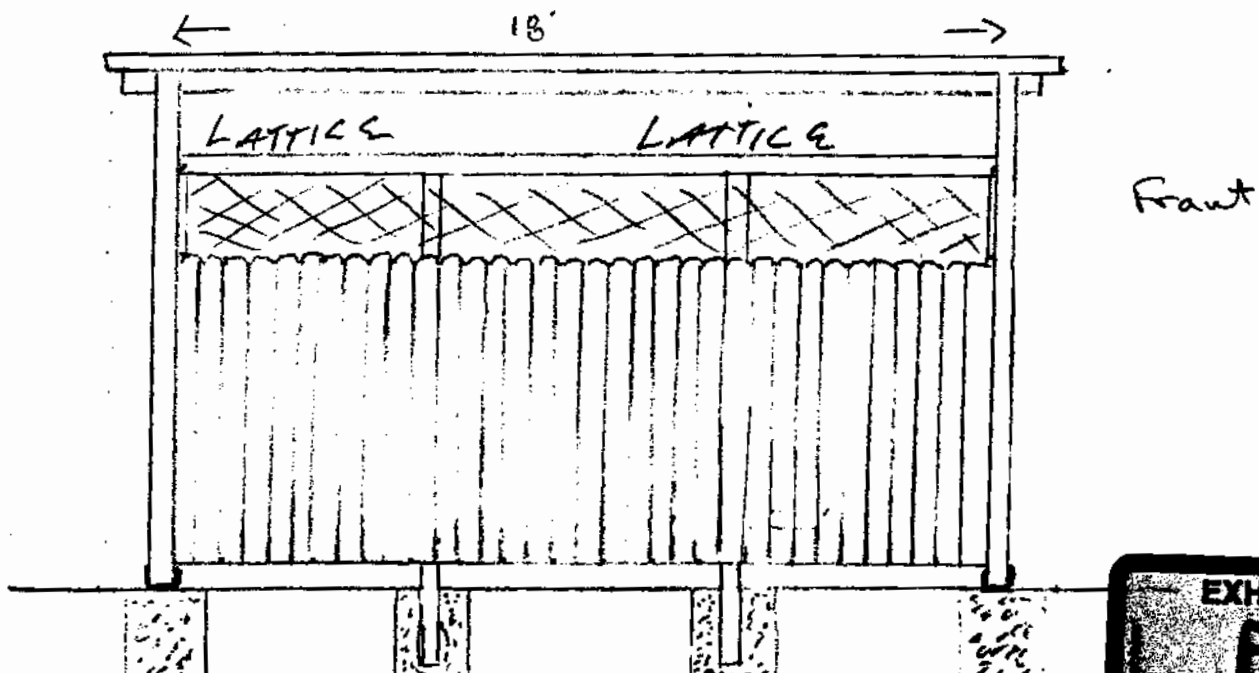
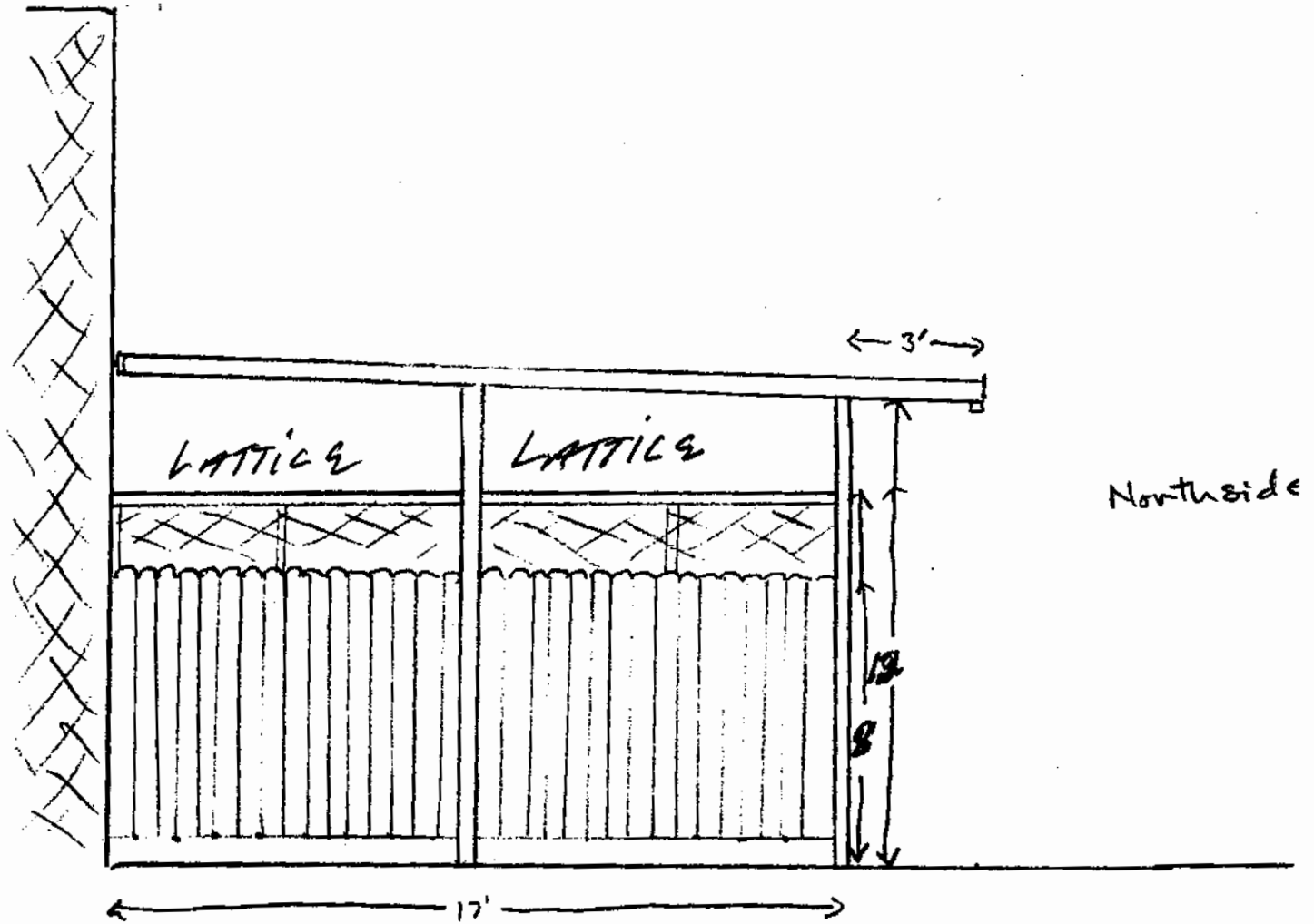


'Hazard Guard'
4" steel pipe
concrete filled

* 3' gate, outswing
panic hardware

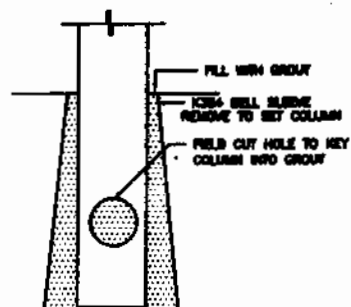
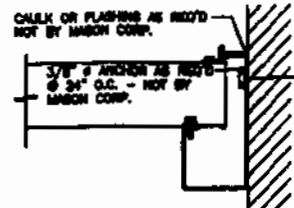
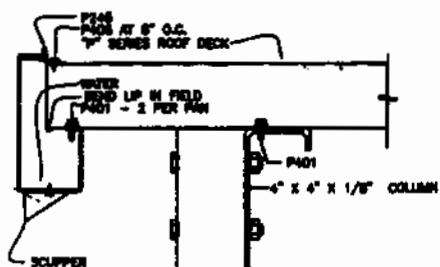
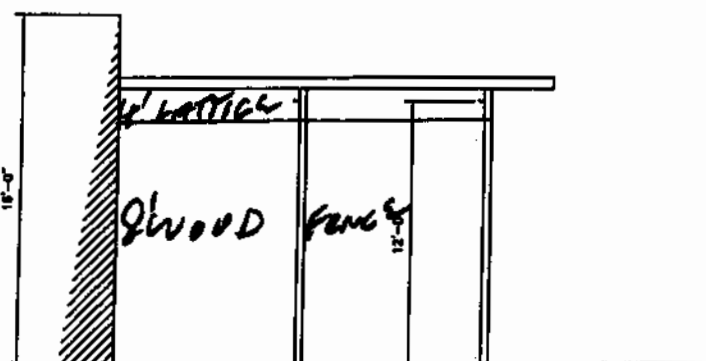
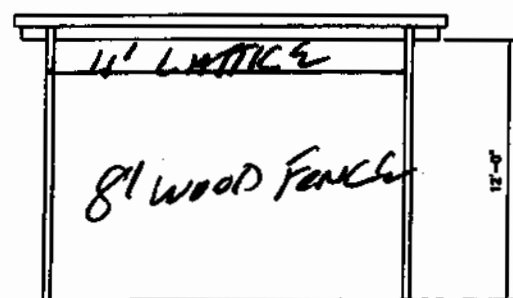
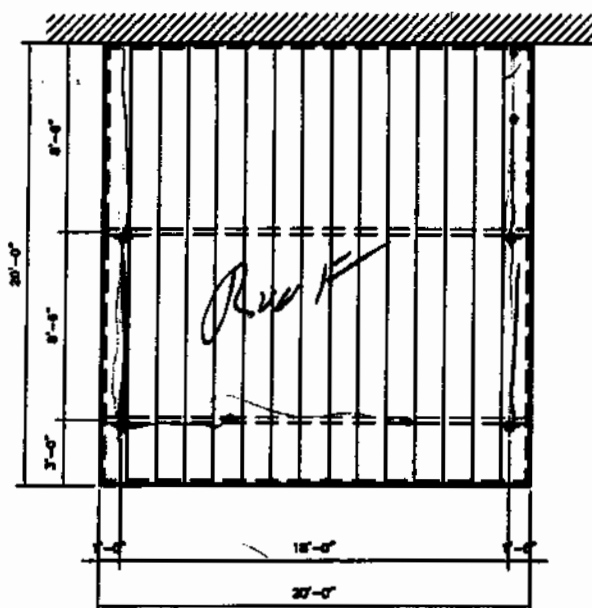


Risky's - Beer garden

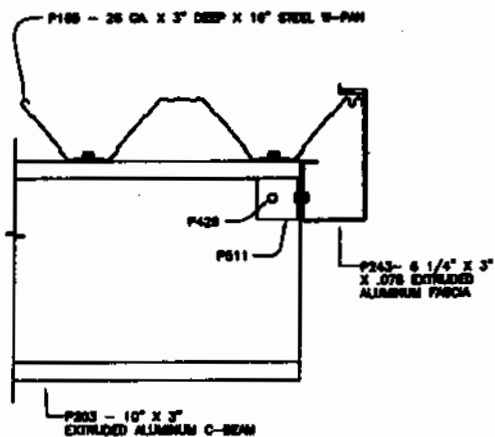


030

EXHIBIT



BELL SLEEVE SET IN REINFORCED CONCRETE FOOTING
(NOT BY MASON CORP.)



THIS DESIGN IS BASED ON IBC 2000 FOR BUILDING CATEGORY I:

XXX PSF LIVE LOAD

XXX (3 SEC. GUST) WIND, EXPOSURE "C", $I_f = 1.0$

XXX GROUND SNOW, $I_f=1.0$, $C_t=1.2$, $C_e=0.9$, $P_f=10.8$ PSF

SNOW DRIFT CALCULATIONS BASED ON THE DATA PROVIDED BY THE G.C.

($W_b=60'$, PROVISION FOR IBC 2000SEC.1607.11.2.5 EXCLUDED) CANOPY

IS NOT DESIGNED FOR DYNAMIC FORCES SUCH AS FALLING SNOW / ICE

SEISMIC CLASS - X, $I_f=1$, $S_e=XXXX$, $S_1=XXXX$, $S_d=XXXX$, $S_d1=XXXX$

SEISMIC USE GROUP - X, INVERTED PENDULUM SYSTEM - R= $C_d=XXXX$

SEISMIC DESIGN CATEGORY - C, EQUIVALENT LATERAL FORCE PROCEDURE

$V=XXXX$

RAINFALL INTENSITY = XX IN/HR 5 MIN. DURATION, 5 YEAR RECURRENCE

ROOF PANELS MUST BE SLOPED $1/4"$ PER FOOT MINIMUM

A $1\ 1/4"$ HOLE IN THE BOTTOM OF THE FASCIA WILL DRAIN APPROX. 100

SQ. FT. OF ROOF DRAINAGE AREA.

THE STRUCTURE IS NOT DESIGNED TO BE ENCLOSED IN ANY WAY.

THE CANOPY MUST BE ERECTED IN ACCORDANCE WITH THIS DRAWING.

CHECK TO INSURE THE DIMENSIONS ARE CORRECT WITH FIELD DIMENSIONS

IT IS THE RESPONSIBILITY OF OTHERS TO CHECK THE ADEQUACY OF EXIST

BUILDING TO ASSURE IT WILL RESIST IMPOSED LOADS.

ALL BOLTS GREATER THAN $1/4"$ TO BE ASTM A307 STEEL OR EQUAL, WITH

A GALVANIZED FINISH. ALL BOLTS LESS THAN $1/4"$ SHALL BE STAINLESS

ALL DECK FASTENERS TO BE #14 SELF DRILLING, HEX HEAD, CADMIUM

PLATED, WITH COMPOSITE ALUMINUM-NEOPRENE WASGERS, THE ALUMINUM

PORTION OF WHICH HAS A MIN. DIMENSION OF .05" THICKNESS AND $5/8"$

OUTSIDE DIAMETER (U.N.O.)

DISSIMILAR METALS MUST BE SEPERATED BY PAINTING WITH A BITUMINOUS

PAINT OR OTHER ACCEPTABLE COATING TO PREVENT GALVANIC ACTION.

SPLICE CEE BEAMS ONLY OVER THE COLUMNS.

COLUMN HEIGHT NOT TO EXCEED 10' ABOVE GROUND UNLESS OTHERWISE

COMPONENT	MATERIAL	ALLOY	FINISH	COLOR	DIMENSIONS
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ROOF DECK	STEEL	ASTM-A440	BAKED ENAMEL	26 GA X 3" DEEP X 18"
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FASCIA	ALUMINUM	6061-T8	BAKED ENAMEL	WHITE .078" X 8 1/4X3"
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BEAM	ALUMINUM	6061T8	BAKED ENAMEL	WHITE .156" X 10" DEEPX3"
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COLUMN	ALUMINUM	6061T8	BAKED ENAMEL	WHITE .125" X 4" X 4"
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PROPOSAL DRAWING FOR DESIGN ONLY

THIS DRAWING HAS NOT BEEN REVIEWED BY OUR CONSULTING ENGINEER.

MASON CORPORATION ASSUMES NO RESPONSIBILITY FOR THE MATERIAL, AS

DETAILED, MEETING MINIMUM BUILDING CODE REQUIREMENTS

IT IS THE RESPONSIBILITY OF THE USER TO HAVE THIS DRAWING SEALED BY

AN ENGINEER.

FOOTING DESIGN - IF REQUIRED

FOOTING SIZES ARE BASED ON:

SOIL CLASS A MIN. 4 PER IBC 2000, TABLE 1804.2. MIN. ALLOWABLE VERT.

AND LATERAL SOIL BEARING OF 2000 PSF AND 150 PSF PER FOOT OF DEPTH

RESPECTIVELY. CONTACT MASON CORP. IF THE SOIL DOES NOT MEET THIS

CRITERIA FOR REDESIGN OF THE FOOTING

REINFORCING STEEL SHALL BE A MINIMUM GRADE 40 AND CONFORM TO ASTM

A815 LATEST REVISION. DETAILS, FABRICATION & PLACEMENT OF REINFORCING

STEEL SHALL COMPLY WITH ACI 315, ACI 318 AND CRSI STANDARDS.

CONCRETE STRUCTURE SHALL CONFORM TO ACI STANDARDS 318-88

"BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE"

FOOTING SIZE: XXXX X XXXX X XXXX DEEP WITH XXXX #5 VERTICAL REBARS,

XXX PER SIDE, AND #4 TIES AT 6" ON CENTER. MIN. SIDE CLEARANCE $3\ 1/2"$

MIN. COMPRESSIVE STRENGTH OF GROUT SHALL BE 2500 PSI

PRELIMINARY REVIEW FOR A MAXIMUM LOAD OF 40 PSF - 120 MPH WINDS

FINAL MAXIMUM LOADING TO BE DETERMINED BY THE ENGINEER

MASON CORPORATION
P.O. BOX 88228
BIRMINGHAM, ALABAMA
35288



JOB NAME : BEER GARDEN
LOCATION : LINCOLN, NE
ARCHITECT :
CONTRACTOR : MADE IN THE SHADE

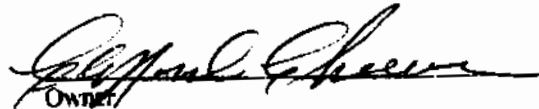
DATE: 11-23-04
DRAWN BY: [signature]
CHECKED BY: [signature]
1 OF 1

DRAWING #
04099

CERTIFICATE

THE UNDERSIGNED being the owner of the real estate and improvements abutting to the west of Lot 1, UPC First Addition, Lancaster County, Nebraska, specifically the premises owned by Risky's, Inc., d/b/a Risky's Sports Bar & Grill; and upon full knowledge of the application for Special Permit No 04-065, submitted on behalf of Risky's, Inc. for a beer garden to be erected on the west side of the business premises does hereby, and for the good and sufficient reasons that the undersigned believes that said beer garden will provide for better customer supervision, better security and better aesthetic and noise screening by virtue of erection of same than would be otherwise available outside of said business premises for its smoking customers, does hereby acknowledge support for said Special Permit and requests that same be approved by all manner of administrative approval of same by the City of Lincoln, Nebraska.

Dated this 8 day of Dec 2004.


OWNER

